

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ERIC LEON CHRISTIAN,

Plaintiff,

v.

LAWRENCE LEAVITT, et al.,

Defendants.

Case No. 2:13-cv-01361-MMD-CWH

ORDER ACCEPTING REPORT AND  
RECOMMENDATION

Before the Court is Magistrate Judge Carl W. Hoffman's Report and Recommendation ("R&R") (dkt. no. 2), regarding Plaintiff Eric Leon Christian's Complaint and application to proceed *in forma pauperis*. (Dkt. no. 1.) Mr. Christian filed an objection on August 16, 2013. (Dkt. no. 4.)

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1).

The R&R recommends dismissal of the action because Defendants Magistrate Judge James Mahan and retired Magistrate Judge Lawrence Leavitt are "immune from damage liability for acts performed in their official capacities." (Dkt. no. 2 at 3.) In his objection, Mr. Christian argues that Judge Mahan and Judge Leavitt are not defendants in this action even though their names appear in the caption to the Complaint. Rather, Mr. Christian argues that he is "suing the United States District Court, whose judges on

1 the case happened to be Judges Mahan and Leavitt[.]” (Dkt. no. 4 at 2.) The Complaint  
2 only alleges facts as to Judge Mahan and Judge Leavitt and does not allege any theory  
3 under which the Court could be held liable for monetary damages.

4 Mr. Christian also argues that Judge Mahan and Judge Leavitt did not act in their  
5 official capacity because their actions resulted in a period of pretrial detention greater  
6 than the maximum sentence for the alleged crime. While the Court notes there were  
7 procedural delays due to competency issues, the Court finds that none of the allegations  
8 in the Complaint suggest that Judge Mahan and Judge Leavitt were acting outside of  
9 their official capacities.

10 It is hereby ordered that the R&R (dkt. no. 2), is accepted and adopted in full. This  
11 action is dismissed with prejudice.

12 The Clerk is ordered to close the case.

13 DATED THIS 30<sup>th</sup> day of October 2013.

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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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